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ABSTRACT

This paper outlines strategies for achieving effective collegial relationships between local academic senates and faculty collective bargaining agents in California community colleges. Following introductory materials, eight principles of collaborative agreements are presented related to roles of key participants and decision-making processes. The duality of roles of senates and bargaining agencies in shared governance is then discussed, highlighting specific legislation establishing governance roles, and spheres of responsibility are examined for academic senates in academic and professional matters, bargaining agents in contractual matters, and the board of trustees in administrative decisions. Next, descriptions are provided of the role of governance councils, or oversight bodies utilized in shared governance and composed of representatives from the administration, senate, bargaining agent, and other constituents, and of the roles of district and college committees. Finally, the consultation process between bargaining agents and academic senates required by the state Education Code is described related to tenure evaluation of newly hired faculty, evaluation of tenured faculty, faculty service areas, minimum qualifications and equivalency, and hiring criteria and processes. Appendixes include a summary of shared governance in the community colleges and a sample shared governance agreement between the El Camino Academic Senate and the Federation of Teachers. (TGI)

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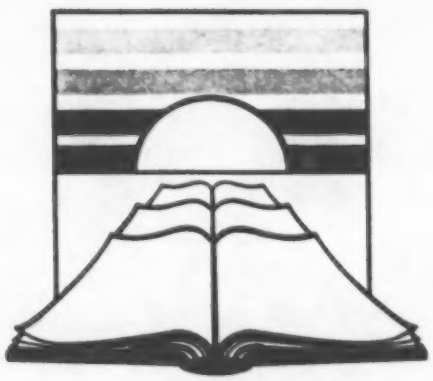
Developing A Model for Effective Senate/Union Relations



Adopted Spring 1996

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Developing A Model for Effective Senate/Union Relations

Academic Senate for California Community Colleges

Relations With Local Senates Committee

ADOPTED - March, 1996

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ABSTRACT

Academic senates and bargaining agents both represent faculty. Each has a unique, defined role, but faculty issues often overlap the areas of responsibility of both the senate and the bargaining agent. It is to the best interest of faculty that the two organizations cooperate and collaborate. With the complexity of challenges facing community colleges, it is expected that this would be a common situation in need of well-defined, agreed-upon strategies. The principles for the development of such a collaboration include significant participation by both parties, agreement by consensus, integrating the knowledge and expertise of all, representing points of view and interests rather than hardened positions, and an open, visible, informal process which generates steady, incremental progress.

The purview of senates and unions are described in statute and code. Title 5, Sections 53200-206 describe collegial consultation on academic and professional matters as the senate's sphere of responsibility. The Education Employment Relations Act governs collective bargaining with the "test" for scope of bargaining being that a subject not specifically listed as a mandatory subject of bargaining is negotiable if 1) it logically relates to an existing negotiable item, 2) is of sufficient concern that conflict could occur which could benefit from the mediation of bargaining, and 3) negotiations will not significantly abridge managerial prerogatives.

Academic senate and union leaders operate within the same college environment, and the governance and committee structure of that environment is critical to assuring appropriate involvement of each in making the best decisions possible. Governance councils can facilitate communication and ease the process, but senates and bargaining agents should not allow such councils to blur their areas of responsibility. Governance councils do not serve as a substitute for the decision making bodies: the senate with regard to academic and professional policies and procedures and the union with regard to conditions of employment. Clarity of roles and responsibilities of the senate and union may be achieved informally or by written agreement on delineation of functions and processes for resolving differences. Whatever methods of consultation senates and unions establish, it is essential that the two bodies communicate regularly, settle their differences directly, and do not let outside forces pit the two organizations against one another.

BACKGROUND

This paper is in response to Resolution 13.2 passed at the Fall Session of 1993:

Whereas AB 1725 mandates duties which are incidental to faculty's professional responsibility, and

Whereas AB 1725 recognizes local academic senates as the representative voice on all academic and professional matters, and

Whereas Title 5, Section 53204, mandates that a district's governance policy cannot impinge upon collective bargaining agreements, and

Whereas it is in the best interest of community college faculty to have effective academic senates and collective bargaining agents, and

Whereas faculty's interest is best served when academic senates and collective bargaining agents work collegially toward the greater good and welfare of faculty,

Therefore be it resolved that the Academic Senate for California Community Colleges direct the Executive Committee to study relations between local academic senates and their collective bargaining agents making recommendations and developing a model outlining strategies toward effective collegial relationships between these organizations.

As with all senate documents, this paper provides suggestions and models which local academic senates may use, revise, or take other actions as they deem appropriate.

INTRODUCTION

In order to promote collegiality and better serve the faculty and students of the California Community Colleges, both bargaining agents and academic senates must be committed to mutual respect, trust, and openness. It is acknowledged that each party has its unique obligation and perspective and yet also shares overlapping responsibilities and authority. It is also acknowledged that the shared goal of both is student equity and success.

With the complexities of these relationships in mind, the bargaining agents and the senates share responsibility for representing and promoting faculty and their commitment to academic excellence and integrity. To clarify the role of each organization both by law and by practice, consider the following.

1. Faculty are best served by having two strong organizations, both promoting faculty interests and their commitment to academic excellence and integrity.

2. AB 1725 strengthened the role of senates, but bargaining agreements can protect important processes, policies, and procedures developed by the academic senate involving academic and professional matters such as affirmative action, hiring, evaluation, tenure review, dismissal, and curriculum development as related to load.

3. Faculty need clear, honest information from as many sources as possible. Faculty organizations need to share information with one another so that leaders are better able to represent the entire faculty.

4. Faculty are *not served* by conflict between their senate and bargaining agent and in such situations can be vulnerable to manipulation if one group is played against the other.

5. Faculty and students win when the organizations cooperate and collaborate with each other.

Rarely would an issue be of *exclusive* interest to only one party. Many times an issue would be of interest to *both* the bargaining agent and the academic senate to develop policies and procedures that affect the faculty. To be effective, such policies and procedures must be developed collaboratively.

PRINCIPLES OF COLLABORATIVE AGREEMENTS

With today's multi-party, complex issues, cooperation is the place to begin most efforts. It is only with that approach that we can truly hope to find solutions to complex problems.

Any complex issue involves many interested parties. Each group makes an important contribution which will determine the success of the effort. Each group also has enough influence that, if they are not included in the process, their influence can be used negatively to cause the quality of the work to deteriorate or block the success of the effort. It is time to create a collaborative process that would model the type of relationship among stakeholders which will lead to effective solutions.

With this in mind, the following "Principles For Any Cooperative Effort" (Dayl, 1994[1]) may be helpful in considering the salient factors involved in developing an agreement to work collaboratively.

1. **Those with formal authority and decision making power must participate** in a way that ensures the success of any cooperative effort. The key decision makers in all organizations involved need to agree to participate in the process and consider it an integral part of their "real" work and decision making.

2. **Most cooperative efforts are based in a decision making process of consensus**, with the fall back to the legal, organizational and/or political process. Consensus is a series of small, important agreements. Each agreement in any design process needs to be clear and understood by everyone. Each agreement is also in a sequence that builds the long term relationships. Consensus creates collaborations and partnerships of a new kind.

3. Inclusion rather than exclusion of people is necessary for any collaborative effort to succeed. All stakeholders (those who are responsible for final decisions, those who must implement decisions or those who can block decision) need to be involved in and agree to the design of the collaborative effort. Each stakeholder's involvement will vary depending on their needs for information, needs for involvement, their expertise, their contribution and their decision making authority. The process design's sequence is based on **integrating the needs, expertise, contributions and responsibilities of all stakeholders**.

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[1]Dayl, Erinellene, "Principles for any Cooperative Effort," Carmel, CA, 1994

4. Collaborative efforts are an investment in the future.

5. **Participants should represent point of view, interests, and needs rather than positions.** There will rarely be one point of view by any given collection of stakeholders. All points of view and needs must be heard, understood, and responded to.

6. Learning together is a foundation element for success of collaborative efforts. Therefore, collaborative efforts need to **achieve results along the way** to demonstrate their legitimacy and effectiveness. These results need to be documented to remind people how far they have come because most tend to forget accomplishments and focus on what is yet to be.

7. People support and contribute to change when they know what is being planned and which arenas are being discussed. Cooperative efforts need to be **open and visible** to everyone.

8. The most innovative ideas are created in open, secure environments. Many formal environments are too constrictive and political. Cooperative efforts need to create open and secure environments either within the formal organizational structure(s) or **create informal structures** within or outside the formal organization(s).

DUALITY OF ROLES IN SHARED GOVERNANCE

Title 5, Section 53203 of the California Administrative Code requires a local governing board to consult collegially with representatives of the academic senate when adopting policies and procedures on academic and professional matters. Title 5, Section 53200, defines academic and professional matters as including 11 specified "policy development and implementation matters."

1. Curriculum, including establishing prerequisites and placing courses within disciplines
2. Degree and certificate requirements
3. Grading policies
4. Educational program development
5. Standards or policies regarding student preparation and success
6. District and college governance structures, as related to faculty roles
7. Faculty roles and involvement in accreditation processes, including self study and annual reports
8. Policies for faculty professional development activities
9. Process for program review
10. Processes for institutional planning and budget development
11. Any other district and college policy, procedure or related matter that the district governing board determines will have a significant effect on students

Title 5, Section 52303(f), states that "Notwithstanding this subsection, the collective bargaining representative may seek to appoint faculty members to committees, task forces or other groups." Some colleges and districts do this formally; others make more informal decisions concerning the role of the bargaining agent in shared governance.

Title 5, Section 53204, states that

> **53204. Scope of Regulations**
> Nothing in this subchapter shall be construed to impinge upon the due process rights of faculty, nor to detract from any negotiated agreements between collective bargaining representatives and district governing boards. It is the intent of the Board of Governors to respect agreements between academic senates and collective bargaining representatives as to how they will consult, collaborate, share or delegate among themselves the responsibilities that are or may be delegated to academic senates pursuant to these regulations.

In consulting over these matters bargaining agents and academic senates must be careful to recognize the following principles (Hittelman, 1993[2]):

1. It is the intent of the Legislature that the **academic senates assume primary responsibility for making recommendations in the areas of curriculum and academic standards.**

2. **Consultations between governing boards and academic senates cannot legally interfere in the collective bargaining process.**

3. **Consultation between the governing board and the academic senate cannot legally cover those subjects which are within the scope of representation** between the exclusive bargaining agent and the district, unless explicitly approved by the bargaining agent.

More specifically, the following must be kept in mind when implementing Sections 53200-204 of Title 5 [*Note: the academic senate's collegial consultation in academic and professional matters*].

1. Collective bargaining for community colleges is governed by the **Education Employment Relations Act (EERA).**

2. In AB 1725, the Legislature sought to strengthen the participation in college governance of faculty, students, and staff, but not at the expense of collective bargaining. Faculty, staff, and student participation **may not intrude on matters which are subject to collective bargaining**, where there is a bargaining agent recognized as the exclusive representative.

3. The EERA does not specifically enumerate all matters which are subject to bargaining. As a result, the Public Employees Relations Board (PERB) has adopted a "test" to determine what is negotiable. The "Anaheim Test" for determining the scope of bargaining is that a **subject not specifically listed as a mandatory subject of bargaining is negotiable if it logically and reasonably relates to a listed subject, is of sufficient concern to the board and the bargaining agent that conflict is likely and the mediatory influence of bargaining is appropriate to resolve the likely conflict, and if negotiations will not significantly abridge managerial prerogatives.** [*Note: see Hittelman's paper in the appendix for a list of some items found by PERB to be within the scope of bargaining.*]

4. The "test" of negotiability is applied to particular fact situations on a case by case basis. As a result, the "scope" of negotiations is subject to periodic modification and interpretation. Since the scope of negotiations is not always precisely fixed, there is a danger that district or **college governance committees and procedures could result in inappropriate and unlawful instructions on the scope of bargaining.** [*Note: see Hittelman's paper in the appendix for examples.*]

5. The list of permissible subjects for [collegial] consultation in Section 53200 is limited by the EERA. Collegial consultation on matters pursuant to 53200(d) cannot legally lead to the creation of any organization or the participation in any activity which would **undermine the ability of the exclusive representative to negotiate with the district.** [*Note: see Hittelman's paper in the appendix for more specifics.*]

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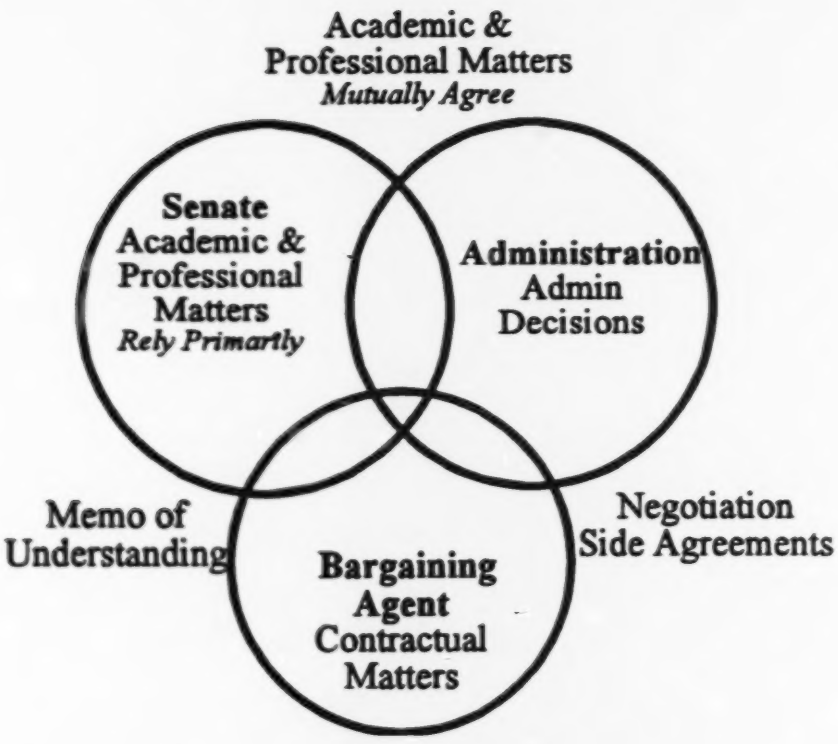
[2]Hittelman, Marty, "Shared Governance," Community College Council of the California Federation of Teachers, AFT, AFL-CIO, Burbank, CA, October 10, 1993.



SPHERES OF RESPONSIBILITY

The academic senate, the bargaining agent, and the board of trustees all have areas in which they are involved in decision making. These "spheres of responsibility" are defined in shared governance board policies and procedures and in negotiated bargaining agreements. The academic senate arena includes the eleven academic and professional matters. The bargaining agent is concerned with issues within the scope of negotiations: generally, hours, wages, and working conditions. The board of trustees is charged with operating the district. However, as pointed out above, the distinction among these spheres of responsibility may not always be clear. As issues arise, on a case-by-case basis, decisions must be made as to how the college will develop policies and procedures to deal with such governance issues. Is it a shared governance issue? Does it require negotiating with the bargaining agent? Often, no simple answer exists. The spheres of responsibility of the senate, bargaining agent, and board overlap. Effective mechanisms must be in place to address the involvement of each.

GOVERNANCE COUNCILS

A commonly used component of a shared governance agreement is an oversight body such as a college or district governance council. This body typically has representatives of students, classified staff, administration, academic senate, and bargaining agent, in numbers determined appropriate at the local level. Duties of the governance council typically include recommending into which sphere of responsibility the issue may fall

(senate, bargaining agent, administration, or a combination) and shepherding the development of policy and procedure regarding the issue until it reaches resolution. Examples include the College Coordinating Committee used at Rancho Santiago College[3] and the College Council developed at Chabot College[4]. Both these documents spell out clearly the charge to the group along with its membership, operating procedures, and reporting requirements.

If academic senates and bargaining agents choose to participate in such a council, several factors should be kept in mind. Academic senate members should not be drawn into discussion of bargainable issues in an inappropriate forum such as a governance council. Bargaining agent representatives should not be party to such a council usurping the role of the senate in academic and professional matters. Discussions of the appropriate roles of the bargaining agent and the senate should take place directly between the two organizations. Issues that are appropriate for and are commonly addressed in Governance Councils include: the operations of the college, maintenance of the facilities, parking and security, admissions and records, registration, and directing issues to the appropriate decision making bodies on campus. Issues that are not appropriate for discussion and decision making in a Governance Council include but are not limited to policies and procedures regarding curriculum, staff development, program review, hiring of faculty, and course offerings.

It is important to stress that such councils are not themselves vested with decision making authority in either academic and professional policies and procedures or in areas dealing with conditions of employment. The academic senate is the body empowered by Title 5 to represent the faculty in recommending policies and procedures related to academic and professional matters. It is by written resolution of the senate that the faculty expresses its will to the board of trustees which may then either accept that recommendation (in primarily relying on the senate) or act favorably on it (in reaching mutual agreement with the senate). It is by exclusive representation of the faculty that the bargaining agent negotiates with the board of trustees to reach contractual terms on conditions of employment. No intermediary body, such as a governance council, should intervene in the direct representation of either the senate or the bargaining agent. The appropriate role for a governance council is to facilitate communication and appropriate involvement of all parties, not to function as an arbiter or decision-maker in senate or union areas of responsibility.

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[3]Rancho Santiago College Community College, *District Shared Governance Guidelines*, August, 1992

[4]Chabot College, *Governance Structure for Academic and Professional Matters*, Draft, September, 1995

DISTRICT AND COLLEGE COMMITTEES

Shared governance *procedures* (beyond the board policy) should establish the committee structure of the district and college through which recommendations on 1) academic and professional matters are developed for ratification by the board and/or academic senate; 2) matters defined in the bargaining agreement are implemented, and 3) administrative decisions are developed, finalized, and disseminated. All such committees should have a clearly delineated charge, reporting responsibility, and membership–including appointing body, term of office, and voting status. The committee structure will usually require an agreement between the academic senate and the bargaining agent on how to handle areas of overlap of their respective duties. The referenced guidelines used at Rancho Santiago and Chabot Colleges provide examples of how committee structure and function can be specified.

CONSULTATION BETWEEN BARGAINING AGENT AND ACADEMIC SENATE

In several areas, the Education Code requires the exclusive bargaining agent to consult with the academic senate. These areas include procedures for tenure evaluation of newly hired faculty (87610.1), evaluation of tenured faculty (87663), and faculty service areas (87743.2). In addition, minimum qualifications and equivalency (87359) and hiring criteria and processes (87360) are assigned to the senate, but these policies are often included in the bargaining agreement. Consequently, bargaining agents and senates must, at a minimum, develop means by which to consult on these issues.

The mechanism by which consultation takes place, on other areas of mutual interest as well as statutory matters, is critical to the success of the relationship between the senate and the bargaining agent. On many campuses, senate and union boards meet jointly to discuss matters of mutual concern. Often, liaisons attend regular meetings to facilitate this dialog. When specific issues arise, faculty members from each organization may meet to assure that the roles of both are clear.

The cooperation and communication between senate and union may occur informally or may be formalized in a *memorandum of understanding* or a *delineation of functions agreement*. While written agreements have been found to be useful to faculty leaders on some campuses, others have chosen <u>not</u> to write out their agreements.

Title 5, Section 53204, on Scope of Regulations (quoted above), specifically allows for such agreements. The bargaining agent and the academic senate acknowledge that their respective spheres of influence and responsibility may, at times, overlap and/or conflict. In general, the two organizations agree that issues pertaining to faculty compensation, conditions and terms of employment, faculty work load, employee safety, security of employment, and other matters commonly considered to be within the realm of the "employee-employer" relationship, including grievance of same, shall fall within the purview of the bargaining agent. The two organizations also agree that issues pertaining to academic and professional standards, academic policy, scholastic standards, faculty development and enrichment, professional ethics, collegial governance, and other matters commonly considered to be within the realm of "academic" concerns, including grievance of same, shall fall within the purview of the academic senate. Further, recognizing that issues will arise that will not clearly fall into either sphere of responsibility, the bargaining agent and academic senate agree to mutually resolve the disposition of such matters.

Such written agreements work best if they focus on structural arrangements rather than strictly delineate the role of each organization in every circumstance. Its is generally preferable to specify the **manner** by which consultation and resolution take place rather than attempt to anticipate the nature of future issues and dictate the **solutions**. For example, the agreement might establish a liaison relationship coupled with annual joint board meetings. It might also enable either board to identify an issue of mutual concern and call together representative faculty to suggest mutually agreeable alternatives. An example of such an agreement, developed at El Camino College, appears in the appendix.

Regardless of the method of consultation between the senate and the bargaining agent, certain basic tenets of cooperation have been found to be helpful.

1. Have regular joint strategy sessions.
2. Establish ongoing communication, for example, with liaisons.
3. Do not fight in public; settle differences jointly.
4. Do not allow others to pit one organization against the other.
5. If personal "sniping" occurs, nip it in the bud immediately by direct conversation between the relevant parties.
6. Do not allow one organization to be given special privileges by the college at the expense of the other; work together for the best interests of both organizations.

SUMMARY

Academic senates and bargaining agents both represent faculty. Each has a unique, defined role, but faculty issues often overlap the areas of responsibility of both the senate and the bargaining agent. It is to the best interest of faculty that the two organizations cooperate and collaborate. With the complexity of challenges facing community colleges, it is expected that this would be a common situation in need of well-defined, agreed-upon strategies. The principles for the development of such a collaboration include significant participation by both parties, agreement by consensus, integrating the knowledge and expertise of all, representing points of view and interests rather than hardened positions, and an open, visible, informal process which generates steady, incremental progress.

The purview of senates and unions are described in statute and code. Title 5, Sections 53200-206 describe collegial consultation on academic and professional matters as the senate's sphere of responsibility. The Education Employment Relations Act governs collective bargaining with the "test" for scope of bargaining being that a subject not specifically listed as a mandatory subject of bargaining is negotiable if 1) it logically relates to an existing negotiable item, 2) is of sufficient concern that conflict could occur which could benefit from the mediation of bargaining, and 3) negotiations will not significantly abridge managerial prerogatives.

Academic senate and union leaders operate within the same college environment, and the governance and committee structure of that environment is critical to assuring appropriate involvement of each in making the best decisions possible. Governance councils can facilitate communication and ease the process, but senates and bargaining agents should not allow such councils to blur their areas of responsibility. Governance councils do not serve as a substitute for the decision making bodies: the senate with regard to academic and professional policies and procedures and the union with regard to conditions of employment. Clarity of roles and responsibilities of the senate and union may be achieved informally or by written agreement on delineation of functions and processes for resolving differences. Whatever methods of consultation senates and unions establish, it is essential that the two bodies communicate regularly, settle their differences directly, and do not let outside forces pit the two organizations against one another.

Community College Council

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Shared Governance in the California Community Colleges

Education Code Section 70901(b)(1)(E) (enacted as part of AB 1725) requires that the board of governors establish "Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of the academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards."

Education Code Section 70902(b) also requires action by local governing boards: "the governing board of each community college district shall do all of the following:

"(b)(7) Establish procedures not inconsistent with minimum standards established by the board of governors to ensure faculty, staff, and students the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right to participate effectively in district and college governance, and the right of the academic senate to assume primary responsibility for making recommendations in the areas of curriculum and academic standards."

The Board of Governors has acted to establish Title 5 minimum requirements for senate (July 12, 1990), student (September 13, 1991) and staff (January 10, 1991) participation in local governance

Each of the set of regulations call for local community college districts to adopt policies and procedures that provide for the opportunity to participate in district and college governance.

Collective Bargaining and Limitation of Scope of Shared Governance

All three sets of shared governance regulations clearly state that the regulations may not be used to impinge on due process rights nor detract from collective bargaining (53204, 51025(d), and 51023.5(b)). The Board of Governors regulations could not and did not change the scope of bargaining as defined in collective bargaining law.

In particular, in the regulations regarding staff (where there is no counterpart under EERA of the Academic Senate), the regulations state that "In developing and carrying out policies and procedures pursuant to subsection (a), the district governing boards shall ensure that its actions do not dominate or interfere with the formation or administration of

any employee organization, or contribute financial or other support to it, or in any other way encourage employees to join any organization in preference to another. In order to comply with Section 3540 et. seq., such procedures for staff participation shall not intrude on matters within the scope of representation under Section 3543.2 of the Government Code. In addition, governing boards shall not interfere with the exercise of employee rights to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Nothing in this section shall be construed to impinge upon or detract from any negotiations or negotiated agreements between exclusive representatives and district governing boards." (51023.5(b)).

Government code Section 3543.5(d) states that it is unlawful for a district to "dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any employee organization in preference to another." Section 3540.1 defines an "employee organization" as "any organization which includes employees of a public school employer and which has as one of its primary purposes representing those employees in their relations with that public school employer." "Employee organization" also includes "any person such an organization authorizes to act on its behalf." Section 3540.1 defines "recognized organization" or "recognized employee organization" as "an employee organization which has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544)."

In Oak Grove School District (1986), the Public Employee Relations Board (PERB) held that it was unlawful for an employer to sponsor a "teachers forum" to discuss matters within scope. In Redwoods Community College District (1987) it was held that an employee council that was formed to improve communications among employees was an employee organization. PERB further ruled that it was unlawful for the employer to deal with the council even on matters outside scope because it undermined exclusive representation. In Antelope Valley (1979), PERB found it unlawful for an employer to set up an organization to represent employees.

In SEIU Local 535 v Ventura County Community College District (I994) a PERB Administrative Law Judge ruled that the Ventura County Community College District violated the Educational Employment Relations Act (EERA) by unlawfully supporting classified senates and dealing with the senates on negotiable topics. The ALJ ruled that the classified senate was an "employee organization" under EERA and could not be a participant in a shared governance structure which made recommendations to management. The exclusive representative of the classified employees was their bargaining agent.

Employee committees, such as classified councils or classified senates, which are not sanctioned by the collective bargaining agent and have district support such as released time or use of copying machines violate Section 3543.5 of the EERA if they undermine the collective bargaining agents status. "Undermining" includes activities that erode support among unit members.

A classified council or classified senate may not operate as an employee organization under EERA. Section 3543.1 of EERA states that "Employee organizations shall have the right to represent their members in their employment relations with public school employers, except that once an employee organization is recognized or certified as the exclusive representative of an appropriate unit pursuant to Section 3544.I or 3544.7, respectively, only that employee organization may represent that unit in their employment relations with the public school employer.

Academic Senate

Academic senates are given a role in EERA, classified councils and classified senates are not.

Academic Senates are specifically noted in Education Code Section 70901 as having a role in shared governance and Title 5 regulations recognize this role. However, Title 5, Section 53203(f) also recognizes the role of the collective bargaining agent. In particular, Section 53203(f) states that "Notwithstanding this subsection, the collective bargaining representative may seek to appoint faculty members to committees, task forces, or other groups." Some colleges and districts do this formally, others make more informal decisions concerning the role of the union in shared governance.

Title 5 lists 11 items that are considered "academic and professional matters" for the academic senate to consult collegially on. These 11 areas are listed later in this paper. It must be noted that several of the 11 items listed may relate to matters within the scope of representation of the Educational Employee Relations Act, Government Code Section 3540 et seq.

In consulting over these matters, governing boards and academic senates must be careful to recognize the following principles:

1. It is the intent of the Legislature that the academic senates assume primary responsibility for making recommendations in the areas of curriculum and academic standards.
2. Consultations between governing boards and academic senates cannot legally interfere in the collective bargaining process.
3. Consultation between the governing board and the academic senate cannot legally cover those subjects which are within the scope of representation between the exclusive bargaining representative and the district, unless explicitly approved by the exclusive representative.

More specifically, the following must be kept in mind when implementing Sections 53200-53204 of Title 5:

1. Collective bargaining for community colleges is governed by the Education Employment Relations Act (EERA).
2. In AB 1725, the Legislature sought to strengthen the participation in college governance of faculty, students, and staff, but not at the expense of collective bargaining. Faculty, staff, and student participation may not intrude on matters which are subject to collective bargaining, where there is a bargaining agent recognized as the exclusive representative.

3. The EERA does not specifically enumerate all matters which are subject to bargaining. As a result, the Public Employees Relations Board (PERB) has adopted a "test" to determine what is negotiable. The "Anaheim Test" for determining the scope of bargaining is that a subject not specifically listed as a mandatory subject of bargaining is negotiable if it logically and reasonably relates to a listed subject, is of sufficient concern to the board and the bargaining agent that conflict is likely and the mediatory influence of bargaining is appropriate to resolve the likely conflict, and if negotiations will not significantly abridge managerial prerogatives.
   The following subjects are some of the items found by the PERB to be within the scope of bargaining:
   (a) affirmative action plans
   (b) benefits
   (c) discrimination
   (d) hours of work, instructional day
   (e) promotions
   (f) in-service training related to wages, hours, safety, promotional opportunities or job performance
   (g) transfer of bargaining unit work outside the unit
   (h) transfer and reassignment
   (I) school calendar
   (j) compensation
   (k) grievance procedure
   (l) job or duty assignments
   (m) layoff effects (notice, layoff order, reinstatement rights, etc.)
   (n) preparation time
   (o) released time
   (p) early retirement
   (q) safety
   (r) student grievance policy
   (s) tools and equipment
   (t) union right to information related to representation
   (u) class size
   (v) contracting out bargaining unit work
   (w) holidays
   (x) job or duty assignments
   (y) personnel files
   (z) assignment of overtime work

4. The "test" of negotiability is applied to particular fact situations on a case by case basis. As a result, the "scope" of negotiations is subject to periodic modifications and interpretation. Since the scope of negotiations is not always precisely fixed, there is a danger that district or college governance committees and procedures could result in inappropriate and unlawful intrusions on the scope of bargaining.

The following items should be noted:

a. A college governance body and a governing board should make certain that the local exclusive organizations are fully informed regarding matters which are proposed for adoption or discussion within the governance framework.

b. It is appropriate for the college and/or any governance participant or party to seek legal advice regarding whether a subject under consideration is subject to collective bargaining.

c. Simply because a topic under discussion has not been included in a collective bargaining agreement, or is not then under discussion or negotiations for inclusion in a contract does not mean that the topic cam be discussed within the governance framework or that the topic is not subject to collective bargaining. The PERB has held that the unilateral adoption of policies which are not in a contract, but are within the scope of representation, is illegal.

5. The list of permissible subjects for consultation in Section 53200 is limited by the EERA:

   a. Section 53200(c)(6) includes "district and college governance structures, as related to faculty roles" in the definition of academic and professional matters. Collegial consultation on this subject pursuant to 53200(d) cannot legally lead to the creation of any organization or the participation in any activity which would undermine the ability of the exclusive representative to negotiate with the district.

   b. Section 53200(c)(10) (processes for institutional planning and budget development), cannot legally be used to make decisions about allocation of district money which would interfere with the ability of the exclusive representative to negotiate wages or any other matters that have economic consequences, including faculty promotion or upgrading.

   c. Section 53200(c)(11) allows the governing board and the academic senate to mutually agree upon "other academic and professional matters." Subsection 11 must be interpreted very narrowly in dealing with matters which may touch upon collective bargaining. It would be clearly illegal for the governing board and the academic senate to mutually agree to define any of the subjects which are part of collective bargaining as academic and professional matters. For example, although the school calendar overlaps into the areas of academic and professional matters, the school calendar must be negotiated between the exclusive representative and the district, without any interference from the academic senate or any other organization.

   d. Section 53200(c)(4) (Educational Program Development), for example, cannot legally be used to make decisions about the academic calendar, in-service training or the flex calendar program (which are all negotiable).

6. Section 53203(a) allows the Academic Senate to assume responsibilities and perform functions that may be delegated to it by the governing board of the district. However, the governing board may not legally delegate any responsibilities or functions which belong to the exclusive representative, such as collective bargaining or grievance handling.

7. Section 53204 specifically warns that the rights given to the academic senate cannot "detract from any negotiated agreement between collective bargaining representatives and district governing boards." Section 53204 must be kept in mind in all dealings with the academic senate.

Title 5 Scope

The scope of the academic senate is in the area of academic and professional matters. These are the same words as appear in the Educational Employment Relations Act (EERA). Students have rights with regard to matters that have or will have a significant effect on students. Staff have rights in areas that have or will have a significant effect on staff. In particular, staff have governance rights in regard to the definitions or categories of positions or groups of positions other than faculty that compose the staff of the district and its colleges and the participation structures and procedures for the staff positions defined and categorized.

Title 5 Method of Consultation Required

Students

51025 (a)

(1) "Students shall be provided an opportunity to participate in formulation and development of district and college policies and procedures that have or will have a significant effect on students. This right includes the opportunity to participate in processes for jointly developing recommendations to the governing board regarding such policies and procedures."

(3) "Governing board procedures shall ensure that at the district and college levels, recommendations and positions developed by students are given every reasonable consideration."

50125© "The governing board shall give reasonable consideration to recommendations and positions developed by students regarding district and college policies and procedures pertaining to the hiring and evaluation of faculty, administration, and staff."

51025(b) Students. "For the purpose of this section, district and college policies and procedures that have or will have a significant effect on students includes the following:

(1) Grading policies.
(2) Codes of student conduct.
(3) Academic disciplinary policies.
(4) Curriculum development.
(5) Courses or programs which should be initiated or discontinued.
(6) Processes for institutional planning and budget development.
(7) Standards and policies regarding student preparation and success.
(8) Student services planning and development
(9) Student fees within the authority of the district to adopt.
(10) Any other district and college policy, procedure or related matter that the district governing board determines will have a significant effect on students."

Staff

Matters having a significant effect on staff are not defined in the regulations except that there is a requirement that a district governing board "reasonably determines, in consultation with staff" that the matter has a significant effect on staff (51023.5 (a)(4)).

51023.5 (a) (4) "Staff shall be provided with opportunities to participate in the formulation and development of district and college policies and procedures, and in those processes for jointly developing recommendations for action by the governing board, that the governing board reasonably determines, in consultation with staff, have or will have a significant effect on staff."

(6) "The policies and procedures of the governing board shall ensure that the recommendations and opinions of staff are given every reasonable consideration."

Academic Senate

In California the Academic Senate is recognized under the Educational Employment Relations Act (EERA) In particular, Section 3540 of EERA states that "It is further the intention of the Legislature that this chapter shall not restrict, limit, or prohibit the full exercise of the functions of any academic senate or faculty council established by a school district in a community college to represent the faculty in making recommendations to the administration and governing board of the school district with respect to district policies on academic and professional matters, so long as the exercise of the function does not conflict with lawful collective agreements."

Title 5, Section 53203 of the California Administrative Code (CAC) requires a local governing board to consult collegially with representatives of the academic senate when adopting policies and procedures on academic and professional matters.

Title 5, Section 53200 defines academic and professional matters as including 11 specified "policy development and implementation matters."

The 11 specified items are:

1. Curriculum, including establishing prerequisites and placing courses within disciplines
2. Degree and certificate requirements
3. Grading policies
4. Educational program development
5. Standards or policies regarding student preparation and success
6. District and college governance structures, as related to faculty roles
7. Faculty roles and involvement in accreditation processes, including self study and annual reports
8. Policies for faculty professional development activities
9. Process for program review
10. Processes for institutional planning and budget development
11. Any other district and college policy, procedure or related matter that the district governing board determines will have a significant effect on students

ATTENTION SHOULD BE PAID TO THE DIFFERENCE BETWEEN CONSULTING COLLEGIALLY ON AN ITEM (SUCH AS CURRICULUM AND CONSULTING COLLEGIALLY ON THE PROCESS (SUCH AS INSTITUTIONAL PLANNING AND BUDGET DEVELOPMENT.

CCLC and Academic Senate Guidelines

The Community College League of California (representing CEOs and Trustees) and the Academic Senate have agreed to guidelines for implementation of Section 53200-53204 of Title 5 of the Administrative Code of California regarding the role of Academic Senates in shared governance. Several items of their agreement involved the role of the union:

Question 10: Can the local board choose the academic senate to be the organization that represents faculty m matters that have previously been collectively bargained or are with the legal scope of bargaining? Can the local board accept recommendations from the academic senate or reach agreements with the academic senate which contradict a collective bargaining agreement?

Answer: The answer to both questions is no. The governing board may not legally delegate to the senate any responsibilities or functions which belong to the exclusive representative. AB 1725 did not change collective bargaining law (i.e. EERA, Government Code Section 3540 et sec.) nor the legal scope of bargaining. The regulations specifically point out that nothing in the Board of Governors regulations may be construed to "detract from any negotiated agreements between collective bargaining and district governing boards."

Question 11: Can a board and union through a collective bargaining agreement change a policy previously adopted by a board based upon recommendation of the academic senate or mutually agreed to with the academic senate?

Answer: Yes. Matters appropriately within the scope of collective bargaining may be negotiated between collective bargaining representatives and district governing boards regardless of previous policies.

Question 12: May the collective bargaining agent delegate matters with the scope of bargaining to the local senate and may the senate delegate matters within the scope of the ten defined areas of "academic and professional matters" to the collective bargaining agent?

Answer: Yes, to the extent permitted by collective bargaining laws. The regulations state that the intent is to "respect agreements between academic senates, and collective bargaining representatives...."

Title 5 Selection of Representatives

Students

51025(a)(4) "For purpose of this section, the governing board shall recognize each associated student organization or its equivalent within the district as provided by Education Code Section 76060, as the representative body of the students to offer opinions and to make recommendations to the administration of a college and to the governing board of a district with regard to district and college policies and procedures that have or win have a significant effect on students. The selection of student representatives to serve on college or district committees, task forces, or other governance groups shall be made, after

consultation with designated parties, by the appropriate officially recognized associated student organization(s) within the district."

51023.5(a)(3) "In performing the requirements of subsections (1) and (2) of this section, the governing board or its designees shall consult with the representatives of existing staff councils, committees, employee organizations and other such bodies. Where no groups or structures for participation exist that provide representation for the purposes of this section for particular groups of staff, the governing board or its designees, shall broadly inform all staff of the policies and procedures being developed, invite the participation of staff, and provide opportunities for staff to express their views."

(a)(7) "The selection of staff representatives to serve on college and district task forces, committees, or other governance groups shall, when required by law, be made by those councils, committees, employee organizations or other staff groups that the governing board has officially recognized in its policies and procedures for staff participation. In all other instances, the selection shall either be made by, or in consultation with, such staff groups. In all cases, representatives shall he selected from the category that they represent. "

The "required hy law" reference above is directed at the situation where there is a collective bargaining agent (the "employee organization"). The district must behave in a manner that does not create an unfair labor practice as outlined earlier in this paper. A district must be very careful not to recognize an organization of classified employees other than the collective bargaining agent if such recognition undermines the union or violates the rulings of PERB.

Shared Governance in Contracts

Many collective bargaining agents have addressed aspects of shared governance in their contracts. Some examples from AFT locals are:

Los Angeles Faculty: By contract, the union and the senate have an equal number of representatives on campus and district budget committees. At least one representative is guaranteed to the union on the campus affirmative action committee and curriculum committee. The contract also spells out the composition of a number of committees including the work environment, summer session, campus Academic Senate committee for distribution of convention attendance funds, and a benefits advisory committee.

Ventura District: The contract requires that the federation have the right to appoint a member to a list of committees on the various campuses. These include Staff Development, Curriculum, Institutional Research, Flex Day, Campus-wide Shared Governance, Academic Affairs, Student Affairs, Campus Use and Development, Planning, President's Cabinet, and Sabbatical Leave. Each campus has a different list.

Compton: The contract requires that the union have the right to appoint one representative as part of the faculty component to a number of standing advisory committees. These include Affirmative Action, Budget, Curriculum, Student Disciplinary Review, General Education, Occupational Safety and Health, Petition, Institutional Advisory, and Institutional Planning.

Glendale: The contract guarantees that both the union and the senate have the right to appoint a representative to serve on college committees in the areas of student personnel services, curriculum and instruction, campus development, planning and facilities.

Los Angeles Classified: Union has right to appoint at least one member to campus/worksite and/or District-wide advisory committees in the areas of accreditation, budget, planning/development, sexual harassment, AIDS education, staff development, and affirmative action.

El Camino: The Academic Senate is written into the contract with a role outlined in a District Policy. The Policy may he amended by the Board of Trustees when such amendment is recommended jointly by the District and the Academic Senate. Committees addressed in the contract include college load review, divisional load, screening committee for full-time faculty hires, calendar committee, sabbatical leave committee, college conference committee, and insurance benefits committee.

Los Angeles Valley College Model:

College Council: College President, Vice-President of Administrative Services, Vice-President of Academic Affairs, Academic Senate President, AFT Faculty Guild, AFT Staff Guild, Associated Students Union (ASU), and Other Classified. The College Council serves as the primary recommending body to the College President on the establishment of policies within the scope of the Council and its standing committees. The College Council may accept a recommendation from a standing committee and pass it on to the College President, or it may reject a recommendation from the standing committee and send it back to that committee. The College Council normally may not change a recommendation from a standing committee before passing it on to the College President. A consensus of the College Council is achieved when there are no more than two (2) dissenting votes.

Standing Committees Budget, Institutional Planning, Space Utilization, Staff Development, and Staff Diversity. The chairs of these committees have reassigned time to perform their duties. The Budget Committee is composed of ten faculty members chosen jointly by the AFT and the Senate, five administrative representatives, one representative from each of four classified bargaining agents, and one ASU representative. The Institutional Planning Committee is composed of four administrative representatives, one Faculty Guild representative, one Staff Guild representative, one ASU representative, one Senate representative, one Other Classified union representative, the Curriculum Committee Chair, and eight faculty at large.

IT SHOULD BE EMPHASIZED THAT THE PERSONS WHO WORK IN SHARED GOVERNANCE AND THEIR BELIEF IN THE VALIDITY OF THE APPROACH ARE MORE IMPORTANT TO THE SUCCESS OF A SYSTEM THAN THE SYSTEM ITSELF. MANY DIFFERENT MODELS HAVE WORKED. MODELS THAT HAVE WORKED IN THE PAST SOMETIMES DON'T CONTINUE TO WORK WHEN CIRCUMSTANCES OR PEOPLE CHANGE.

Martin Hittelman
10/17/94

EL CAMINO COLLEGE
COUNCIL OF THE ACADEMIC SENATE & FEDERATION OF TEACHERS

An agreement between the El Camino College
Federation of Teachers and Academic Senate
respecting the implementation of AB 1725
shared governance mandates

1. The Federation of Teachers is the exclusive bargaining agent for certificated faculty members.

2. The Academic Senate is chartered to provide the faculty with a formal and effective procedure for participating in the formation of District policies on academic and professional matters.

3. Title 5, California Code of Regulations, Section 53200, et seq., indicates a minimum of ten (10) specific areas of academic and professional matters in which the Academic Senate shall consult collegially with the Board of Trustees or their designee. The primary function of the Academic Senate is to participate in the development of policies regarding these specific areas and/or other areas that have been mutually agreed upon.

4. Many of the academic and professional matters identified in Title 5 are also within the jurisdiction of the current collective bargaining Agreement between the Federation and the District.

5. In those areas of academic and professional matters which appear to be both within the jurisdiction of the Academic Senate as per Title 5 and within the jurisdiction of the Federation as per the contract, both organizations agree to consult with one another prior to submitting any proposals.

6. Title 5 provides that nothing contained therein shall be construed to detract from any negotiated agreement between collective bargaining representatives and District Governing Board.

7. It is the stated intent of Title 5, Section 53204, that all parties will respect agreements between the Academic Senate and the Federation as to how they will consult, collaborate, share or delegate among themselves the responsibilities that are or may be delegated to the Academic Senate pursuant to Title 5.

8. The Academic Senate of El Camino College and The Federation of Teachers desire to enter this Agreement in order to avoid future misunderstandings and to clarify their respective roles relating to the implementation of AB 1725 Shared Governance mandates contained in Title 5.

The Federation of Teachers and the Academic Senate of El Camino College agree to the following:

A. The Federation agrees that the President of the Academic Senate or designee shall serve as a member-at-large on the Federation's Contract Writing Committee. Whoever serves must be a member in good standing of the Federation. A copy of the final negotiating package adopted by the Federation's Executive Committee shall be provided to the President of the Academic Senate.

B. The Presidents of the Academic Senate and the Federation shall consult collaboratively prior to making appointments to campus wide committees, whether those appointments are within the exclusive jurisdiction of either organization or shared by both.

C. The Executive Committees of the Senate and Federation shall meet jointly at least once each semester to discuss matters of mutual interest and concern.

D. It is the intent of the parties that changes to this Agreement shall be arrived at through a process of collaborative discussions. Modifications shall be subject to the approval of the Academic Senate Council and the Federation's Executive Committee.

_____
President,
Academic Senate

_____
President,
Federation of Teachers

_____
Date